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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,145	11/03/2003	Robert W. B. Davidson	MCCART-3	3840

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EXAMINER

ENGLE, PATRICIA LYNN

ART UNIT PAPER NUMBER

3612

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/700,145

**Applicant(s)**

DAVIDSON ET AL.

**Examiner**

Patricia L Engle

**Art Unit**

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ST

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/12/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second guides being hydraulic cylinders (claim 6), the first and second guides being upper and lower runs of a belt (claim 7), the base being mounted to the floor of the truck box (claims 11 and 23) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 6 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for providing a first and second guide with blocks slideably engaged therewith, does not reasonably provide enablement for making the first and second guides hydraulic cylinders. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. How would hydraulic cylinders move the blocks in opposite directions? How would the hydraulic cylinders interact with the means for moving the blocks? What would be the means for moving the blocks if the hydraulic cylinders are the guides?

4. Claims 11 and 23 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for providing a base, does not reasonably provide enablement for mounting the base directly to the floor of the truck box. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. How would the base be directly secured to the truck box? How would the base interact with the wheel well of the truck box?

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “scissor-like” in claims 1 and 17 is used by the claim to mean “moving in opposite directions”, while the accepted meaning is “A cutting implement consisting of two blades joined by a swivel pin that allows the cutting edges to be opened and closed.”<sup>1</sup> (therefore the term scissor-like would mean two links joined by a swivel pin that are allowed to be opened and closed). The term is indefinite because the specification does not clearly redefine the term.

### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1 (as understood), 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hille (US Patent 2,798,760) in view of Mitchell (US Patent 5,016,858).

Regarding claim 1 (as understood) Hille discloses a lifting mechanism to raise and lower a cap relative to a vehicle, said mechanism comprising a pair of lifting devices (15), said devices comprising: a support member (17) for engagement with said cap (14); a base (Fig. 3) attached to the vehicle (10); at least one first and one second guide (first and second guides are the openings in track 22 on opposite sides as seen in Fig. 6) attached to the base; each of said at least first and at least second guides (22) having at least one block (20) slideably engaged therewith; each of said blocks (20) being connected to a link (16) extending to the support member (17); means for moving (Fig. 5) the blocks (20) along said guides (22), the blocks on said at least one second guide being adapted to move in an opposite direction to said blocks on said at least one first guide (column 2, lines 52-54); whereby movement of the blocks result in scissor-like movement of the links (Figs. 2-4).

Hille does not disclose that the lifting mechanism is in combination with a truck bed.

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Mitchell discloses a lifting mechanism in combination with a truck bed in which a base (23) is mounted on the truck box and the support member is connected to the cap.

Hille and Mitchell are analogous art because they are from the same field of endeavor, i.e., lifting mechanisms for campers.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the lifting mechanism of Hille on a truck bed camper with a base mounted to the truck bed and a support member mounted to the cap as taught by Mitchell.

The motivation would have been to make the installation of the extendable top easy and to allow a regular truck to be used as a camper instead of having to pull the camper behind the truck bed which would make transporting the camper easier.

Therefore, it would have been obvious to combine Mitchell with Hille to obtain the invention as specified in claim 1.

Regarding claims 7 and 8, the Examiner takes Official Notice that an endless loop is an equivalent moving means to a cable and pulley system. It would have been obvious to one of ordinary skill in the art at the time of the invention to use an endless loop in place of the cable and pulley system. The motivation would have been to have less moving parts to operate the lifting mechanism.

11. Claims 1-5, 10, 12-22, 24-28 all as understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US Patent 3,160,435) in view of Mitchell (US Patent 5,016,858).

Regarding claim 1 (as understood) Smith discloses a lifting mechanism to raise and lower a cap relative to a vehicle, said mechanism comprising a pair of lifting devices (Fig. 2 and 5), said devices comprising: a support member (35) for engagement with said cap (9); a base (Fig. 2)

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attached to the vehicle (1); at least one first and one second guide (23,25) attached to the base; each of said at least first and at least second guides (23,25) having at least one block (29) slideably engaged therewith; each of said blocks (29) being connected to a link (33) extending to the support member (35); means for moving (23,25,41) the blocks (29) along said guides (23,25), the blocks on said at least one second guide being adapted to move in an opposite direction to said blocks on said at least one first guide (column 2, lines 44-46); whereby movement of the blocks result in scissor-like movement of the links (Figs. 2-4). Regarding claims 2 and 17, Smith discloses the lifting mechanism wherein said at least first and at least second guides are threaded rod (23,25). Regarding claims 3 and 18, Smith discloses the lifting mechanism wherein at least one of said threaded rods (23,25) is connected to an electric motor (41). Regarding claims 9 and 21, Smith discloses the lifting mechanism wherein the base further comprises at least one recess (19) for supporting one of said blocks (29). Regarding claims 13 and 25, Smith discloses the lifting mechanism wherein a switching circuit for controlling the motion of the lifting mechanism (column 2, lines 59-67). Regarding claims 14 and 26, Smith discloses the lifting mechanism further comprising a lock to stop unauthorized use of the lifting mechanism (column 3, lines 4-10). Regarding claims 15, 16, 27 and 28, Smith discloses the lifting mechanism further comprising a safety switch (column 2, lines 65) for stopping motion of the lifting mechanism when it reaches a fully raised and lowered positions.

Smith does not disclose that the lifting mechanism is in combination with a truck bed.

Mitchell discloses a lifting mechanism in combination with a truck bed in which a base (23) is mounted on the truck box and the support member is connected to the cap.



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Smith and Mitchell are analogous art because they are from the same field of endeavor, i.e., lifting mechanisms for campers.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the lifting mechanism of Smith on a truck bed camper with a base mounted to the truck bed and a support member mounted to the cap as taught by Mitchell.

The motivation would have been to make the installation of the extendable top easy and to allow a regular truck to be used as a camper instead of having to pull the camper behind the truck bed which would make transporting the camper easier.

Therefore, it would have been obvious to combine Mitchell with Smith to obtain the invention as specified in claims 1-3, 9, 13-18, 21 and 25-28

Regarding claims 4, 5, 19 and 20, Smith as modified does not disclose a biasing means on the threaded rod. The Examiner takes Official Notice that it would have been obvious to one of ordinary skill in the art at use a biasing means (especially a spring) to bias the block to the position wherein the cap is raised. The motivation would have been to reduce the torque requirement of the motor to start the movement of the blocks and therefore to allow a smaller motor to be used in the lift mechanism system than the motor that would be required to provide the force required to start the blocks.

Regarding claims 10, 12, 22 and 24, the Examiner takes Official Notice that it would have been obvious to one of ordinary skill in the art at the time of the invention to secure the base to the side of the truck directly or using a bracket. A posthole bracket would have been advantageous because it would have provided stability and would not have required an holes to be added to the truck bed.

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*Conclusion*

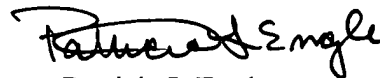
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art discloses other cap raising mechanisms.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-5777.

The examiner can normally be reached on Monday - Friday from 8:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patricia L Engle  
Examiner  
Art Unit 3612

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August 26, 2004